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FISCAL IMPACT REPORT

SPONSOR King DATE TYPED 3/18/05 HB 153/aHGUAC/aHAFC/aSFC

SHORT TITLE Utility Operator Regulation and Fees SB _____

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$35.0			Recurring	PWSSOPW Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB293.

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$35.0	\$70.0	Recurring	PWSSOPW Fund
	(\$25.0)	(\$25.0)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Environment (NMED)

Office of the State Engineer (OSE)

SUMMARY

Synopsis of SFC Amendment

The SFC amendments to HB 153 states that the fees shall be retained by NMED for use, subject to appropriation by the legislature.

The amendments also lowers the cap for the fees as follows:

- for examination for certification in each classification from \$200 to \$100;
- for renewal of a certificate after a period set by rule from \$200 to \$40; and
- for issuance of a certificate by endorsement from \$200 to \$100.

The amendment also states the first increase in fees shall not result in any fee greater than \$30. This appears to require that all the fees discussed above must be below \$30.

Synopsis of HAFC Amendment

The HAFC amendments to HB153 would exempt from certification requirements “domestic liquid waste treatment units” that are designed to discharge less than 2000 gallons per day and that are subject to the Liquid Waste Regulations promulgated by the Environmental Improvement Board. The amendment also exempts from certification requirements conventional septic systems that discharge 2000 gallons per day or greater that do not include advanced treatment systems such as aerobic treatment units.

Synopsis of HGUAC Amendment

The HGUAC amendment to House Bill 153 would reduce the annual cap on fee increases from 10 percent of the existing fee to five percent of the existing fee and makes several technical amendments.

Synopsis of Original Bill

House Bill 153 amends the Utility Operators Certification Act (hereafter, the Act) to:

1. Eliminate the distinction between certified operators and certified supervisors;
2. Add a new definition of the term “operate” to the Act to provide guidance regarding who must be certified;
3. Place administration and enforcement of the Act under the Department of Environment (NMED) rather than under the Water Quality Control Commission (WQCC) under current statute, including allowing NMED to suspend or revoke a certification under specified circumstances, to enforce compliance orders, and to conduct public hearings pursuant to appeals and maintain a record of same;
4. Allow the WQCC to adopt rules relating to the administration and enforcement of the Act;
5. Allow the WQCC to adopt criteria for identifying the minimum number of certified operators needed to operate the various classifications of public water supply systems or public wastewater facilities to protect public health;
6. Increases the maximum fees:
 - a. For examination for certification as a certified operator in each classification from \$25.00 to \$200.00
 - b. For renewal of a certificate after a period set by rule from \$10.00 to \$200.00
 - c. For issuance of a certificate by endorsement from \$25.00 to \$200.00.
7. Fees would not be increased more than once per calendar year, with the first increase not to exceed \$50.00 and subsequent increases not to exceed 10 percent of the existing fee;
8. Amends the purpose and administration of the public water supply system operator and public wastewater facility operator fund;
 - a. Under current statute, the fund is used to make necessary refunds. At the end of each month after refunds, the remaining balance is transferred to the general fund by the State Treasurer.
 - b. Under HB153, the fund would be used for administering and enforcing the Act. It would be administered by NMED. Money in the fund would be appropriated to NMED. Balances would not revert but would be credited to the fund, as would earnings.

9. Makes it illegal to allow operation of a public water or wastewater facility unless the facility is operated or under the supervision of a certified operator who meets or exceeds the appropriate certification level;
10. Allows appeals of compliance order hearing outcomes to the WQCC based on the record; and
11. All penalties collected from compliance orders pursuant to Section 61-33-10 NMSA 1978 would be deposited in the general fund (as at present) but to the credit of the current school fund.

Significant Issues

According to NMED, currently, there are 2,954 water and wastewater certified operators in New Mexico. There are approximately 1,300 public water systems and 400 public wastewater systems that are required to have certified operators. Depending on the size of the water or wastewater system, one or more certified operators may be required. There are a significant number of public water systems that do not have certified water operators. HB 153 strengthens the New Mexico Environment Department's ability to enforce the requirement to have certified water and wastewater operators to protect public health, safety and welfare.

The Utility Operator Certification Program affects most New Mexicans; the program provides training, testing and licensing to ensure public utility operators have the knowledge and skill to properly operate and maintain public water and wastewater systems. Proper operation of these public facilities is critical because:

- Improper operation can seriously jeopardize public health by allowing operational failures that can result in unsafe drinking water or sewage spills.
- The state has invested billions of public dollars in water and wastewater utility infrastructure statewide, and this investment must be protected.
- Proper operation protects the environment, especially the quality of our limited ground and surface water resources; one of the worst fish kills in New Mexico in recent years was caused by an improper discharge from a drinking water plant to the Rio Ruidoso, a result of operator error.

According to NMED, HB153 would provide necessary resources to protect public health through this program and would modify outdated statutory provisions which hamper the effectiveness of the program.

NMED offered the following rationale regarding the HAFC amendment:

The Liquid Waste Regulations include requirements for routine maintenance and solids removal for small (less than 2000 gallon per day) "domestic waste treatment units." The liquid waste requirements are more appropriate for small systems (often serving a single residence) rather than requiring compliance with full operator certification licensing.

Larger conventional septic systems (2000 gallons per day or greater) that have no added aerobic or other treatment would also be exempt from certification requirements. These systems must be permitted under the authority of the Water Quality Act and are covered by maintenance and solids pumping requirements of a ground water discharge permit. Conventional septic systems are also viewed as passive systems with no operational requirements other than occasional pumping of solids.

FISCAL IMPLICATIONS

The General Fund would lose \$20-50.0 thousand per year if this bill were adopted and revenues from the public water supply system operator and public wastewater facility operator fund were dedicated to the NMED program.

Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities. To eliminate the continuing appropriation, the bill could be amended on page 9, lines 1 and 2, “is appropriated to the department” and insert “shall be retained by the department for use, subject to appropriation by the legislature” in lieu thereof.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB293.

OTHER SUBSTANTIVE ISSUES

The proposed amendments were developed through a stakeholder workgroup convened in May 2003; the workgroup included representatives of NMED, certified operators, municipalities, and rural water systems. The language in HB153 is the same as the language included in HB172 and SB131 during the 2004 legislative session. The language has not changed since approval by the workgroup in 2003.

POSSIBLE QUESTIONS

1. How will NMED use the additional funding to improve the Utility Operator Certification Program?
2. How many operators lack the necessary certification at present?

DH/sb:lg